

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 62474-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
WILLIAM JOSEPH CLARK,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: December 28, 2009

PER CURIAM. William Clark appeals the sentence imposed following his conviction for felony violation of a no-contact order. He contends, and the State concedes, that the court erred in concluding it lacked discretion to consider the victim's willing participation as a basis for an exceptional sentence below the standard range. It is unclear from the record whether the court exercised its discretion or, contrary to our decision in State v. Bunker, 144 Wn. App. 407, 421, 183 P.3d 1086 (2008), concluded that it lacked discretion to consider the victim's willing participation. Accordingly, we remand for reconsideration and/or clarification of the court's ruling on Clark's request for an exceptional sentence.

Clark also contends the court erred in concluding that an amended version of RCW 4.43.7541 applies to this case and requires imposition of a DNA collection fee. He further contends that defense counsel was ineffective for failing to object to application of the amended statute to this case. For the reasons set forth in our recent decisions in State v. Brewster, \_\_\_ Wn. App. \_\_\_,

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218 P.3d 249 (2009) (DNA fee statute in effect at time of sentencing controls) and State v. Thompson, Nos. 61998-5-I, 62048-7-I, 2009 WL 4021935 (Nov. 23, 2009) (following Brewster), these arguments fail.

Remanded for proceedings consistent with this opinion.

For the court:

Becker, J.

Dwyer, A.C.J.

Cox, J.